

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

GENERAC POWER SYSTEMS INC.,

**Plaintiff-
Counter-Claim Defendant,**

Case No. 10-C-0947

-vs-

KOHLER CO.,

Defendant-Counterclaimant.

DECISION AND ORDER

This matter comes before the Court on the motion filed by the Plaintiff Generac Power Systems Inc. (“Generac”) to lift the Court’s order staying these proceedings pending the completion of the two reexamination proceedings before the United States Patent and Trademark Office (“PTO”) regarding the ‘345 patent’s validity. The basis for its motion is that the PTO has decided that both applications for reexamination lack merit. Defendant Kohler Co. opposes that motion asserting that neither reexamination proceeding is complete.

This Court’s order granting the stay weighed the interests of both parties and concluded that a stay of this action pending conclusion of the PTO reexaminations was appropriate. Reexamination of a patent is only complete upon the PTO’s issuance of a certification canceling or confirming the patent. *See* 35 U.S.C. § 316; 37 C.F.R. § 1.997(a). Such certificates cannot issue until all appeals are concluded. *See id.*

Generac acknowledges that Kohler may appeal the *inter partes* reexamination decision to the Board of Patent Appeals. Kohler has indicated that it will do so once the examiner issues a Right of Appeal Notice. The *inter partes* reexamination is therefore not complete, and Generac's motion to lift the stay is denied.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Generac's motion to lift the stay (Docket No. 48) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 29th day of November, 2011.

BY THE COURT:



HON. RUDOLPH T. RANDA
U.S. District Judge